Supreme Court of the United States.

No. 542. October Term, 1899.

William B. Tyler, Plaintiff in Error,

v.

The Judges of the Court of Registration.

Motion to Advance.

The Judges of the Court of Registration, the defendants in error, move that this cause be advanced upon the docket of the court for hearing and argument at an early day to be appointed therefor after the beginning of the October term of 1900.

Brief Statement of the Case.

In 1898, by chapter 562 of the statutes of that year, known as the Land Registration Act, the Legislature of Massachusetts established as a part of the judicial department of the State a court of record, having jurisdiction throughout the entire Commonwealth, and known as the Court of Registration. The statute gave the court jurisdiction over all questions relating to the title to land within the State, with power, upon application by land owners and certain other persons interested and after appropriate judicial proceedings, to enter a decree conclusive upon all persons, declaring the title upon which such land, subject to certain specified rights, should be held. The statute further provided a system of conveying and dealing with land, the title of which had been thus judicially declared, embodying substantially the principles of the so-called Torrens system of registration and transfer of title to land.

The present case arises upon a petition for a writ of prohibition, brought to restrain the judges of the Court of Registration aforesaid from proceeding to hear and determine an application to such court made in accordance with the statute, praying for a decree declaring the title to certain land. The petitioner for the writ of prohibition alleges that the statute establishing the court is in violation of the Constitution of the United States in that it seeks to deprive persons of their property without due process of law, and that the Court of Registration is, therefore, no court at all and has no jurisdiction whatsoever. The full bench of the Supreme Judicial Court of Massachusetts, in a decision rendered January 3, 1900, decided that the statute was constitutional, and this writ of error is brought to review that judgment.

Reasons for Motion to Advance.

The following "special and peculiar circumstances" are here stated in accordance with Rule 26, paragraph 7.

First. — The question here raised involves a matter of great and general public interest and importance, in which the Commonwealth of Massachusetts in particular and several other states of the Union as well are concerned, and the case is, therefore, within the spirit if not within the letter of Rule 26, paragraph 5.

1. The question relates to the constitutionality of a statute of Massachusetts establishing a Court of Registration as a part of the judicial branch of the State government and conferring upon it a large and important jurisdiction, and this case attacks the legality of such court and of all its acts, past, present and future. The Land Registration Act went into effect on the first day of October, 1898. The judges being duly appointed and qualified in that month, at once proceeded to act upon petitions and to make decrees confirming titles to land and ordering them to be registered under the act, and they have since continued and are now continuing to exercise their authority in this manner. Since the establishment of the court, about 275 certificates of title have been issued covering land situated in seven of the fourteen counties of the State. There are now pending before the court about 50 cases. The question here raised

concerns the validity of all decrees and certificates of title heretofore issued and hereafter to be issued, the marketability of lands to which such certificates relate is adversely affected, and the rights of the owners and mortgagees of such lands, who are now quite numerous are left in doubt while this case remains undetermined.

2. It is against public interest that a court should continue hearing cases and rendering final judgments and decrees, if the law under which it is established be unconstitutional and all its acts, therefore, void and of no effect.

3. In the several states mentioned below and in the District of Columbia land registration acts, the constitutionality of which is involved in the determination of this case, are now under active consideration by legislatures and bar associations, and in at least two states (Illinois and California), land registration acts are already in operation.

(1) District of Columbia. A bill is now pending in Congress.

(2) Rhode Island. A commission appointed by the Legislature has the matter now under consideration.

(3) Montana. The matter was before the last Legislature and was continued to await the decision in this case.

(4) Missouri. A bill was before the Legislature in 1899.

(5) Virginia. A committee of the Bar Association was appointed in 1899 to report a bill.

(6) Alabama. Legislation was recommended by the Bar Association in 1899.

(7) Tennessee. A bill was drawn in 1898 and recommended by the Bar Association.

(8) Texas. Legislation was recommended by the Bar Association in 1897, 1898 and 1899.

Second. — The pendency of this case, the fact of which has been widely published and is generally known throughout the state, operates materially to suspend the carrying out of the provisions of the statute and the exercise of the powers conferred upon the Court of Registration, hampers the entire system of land registration established by the Massachusetts Legislature and embarrasses the operation of an important part of the judicial branch of the state government. Many land owners who wish to avail them-

selves of the provisions of the Land Registration Act are deterred from doing so while this case is pending, and since the court has no power to act except upon application, the amount of business done by the court is much less than it would be if the question should be finally set at rest by a decision of this court upholding the statute.

Third. — The case is within the spirit of Rule 32, the only question in issue being the question of the jurisdiction of the court below. The reason for the rule, the reason for the similar provisions of chapter 236 of the Acts of Congress of 1889, and the reason for clause 1 of section 5 of chapter 517 of the Acts of 1891, fully cover this case. It is intended that questions as to the jurisdiction of a court should be heard and determined by the court of last resort with the shortest possible delay. It is against public interest that the final decrees or judgments of a court on questions of jurisdiction should remain open to question longer than necessary.

HOSEA M. KNOWLTON,

Attorney-General of the Commonwealth of Massachusetts.

The plaintiff in error assents to the allowance of the above motion.

By his counsel,

J. L. THORNDIKE.